

The Honorable Ricardo S. Martinez

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON**

T. Jeffrey Keane, being first duly sworn upon oath, under penalty of perjury, hereby deposes and says:

1. I am over the age of majority, am competent to testify herein, and have personal knowledge regarding the matters stated;

2. My firm represented Joyce Schweickert in opposing issuance of and seeking an order quashing subpoenas improperly issued by defendant John Du Wors to Apple and Google. On December 4, 2014 this Court entered an order quashing defendant Du Wors's subpoenas and awarding plaintiff her attorney fees "...for time incurred opposing the unduly burdensome and unwarranted subpoenas." [Dkt. #93, p. 22:4-5]. The Court ordered "...that a

1 similar award is appropriate for the time that counsel for Joyce Schweickert and Jeffrey
 2 Keane incurred in opposing the subpoenas." *Id.*, p. 22:6-7. This declaration details the time
 3 expended and the costs incurred by myself and members of my firm in objecting to and
 4 ultimately seeking to quash overbroad and statutorily prohibited subpoenas.

5 3. I have more than thirty years of civil litigation experience, and I have
 6 represented Joyce Schweickert for more than twenty years in a variety of matters. My time in
 7 this matter, and for all matters I handle for a favored client like Ms. Schweickert, is charged at
 8 \$335.00 per hour. This is a substantially lower rate than that charged by my professional
 9 peers;

10 4. Chris W. Moore (CWM) is an attorney who performs work for my firm.
 11 During the first two weeks of September of 2014, I was on vacation and away from my office.
 12 Mr. Moore was primarily responsible for reviewing the subpoenas issued by defendants in my
 13 absence, evaluating responses to the subpoenas, and for researching and writing the motion to
 14 quash. The time he spent was reasonable, necessary, and non-duplicative of my own efforts.
 15 Mr. Moore has more than thirty years of civil litigation experience. Mr. Moore's time in the
 16 captioned matter was charged at \$275.00 per hour, which is less than his professional peers
 17 charge;

18 5. Thomas J. Degan Jr. (TJD) is an attorney at my firm. Mr. Degan has more
 19 than thirteen years' experience in litigation, and Mr. Degan has been employed by my firm for
 20 over twelve years. His time spent in the captioned matter was charged at \$245.00 an hour;

21 6. Donna M. Pucel (DMP) is my paralegal. Ms. Pucel has been employed by my
 22 firm for over eighteen years. Her time spent in the captioned matter was charged at \$145.00
 23 an hour;

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1 7. Upon our receipt of the subpoenas, we requested that counsel for Du Wors
 2 voluntarily withdraw the subpoenas to Apple and Google. [Dkt. #78, Exhibit A¹] Defendants
 3 simply ignored our request and ignored the conclusive authority we provided in support of our
 4 position. Counsel did not withdraw the subpoenas. The professional time we spent thereafter
 5 seeking an order quashing defendant's subpoenas was necessarily incurred, since defendants
 6 refused to withdraw the subpoenas;

7 8. The fee total for the services provided to Joyce Schweickert in this matter was
 8 \$5,381.25. In my opinion, based upon my knowledge of rates charged in Washington State
 9 by attorneys in Federal litigation matters, this total fee amount is reasonable, and the hours
 10 billed are also reasonable. The hourly rates charged for professional time by attorneys and
 11 staff at Keane Law Offices is comparable to if not lower than rates charged by similarly
 12 capable attorneys and support staff in Washington State. Attached hereto as Exhibit 2 are
 13 detailed invoices reflecting the manner in which my firm spent time opposing and ultimately
 14 obtaining an order quashing defendant Du Wors's subpoenas. The attached time records are
 15 recorded contemporaneously with performing the work;

16 9. In addition to the attorney fees described above, I spent a total of one hour
 17 assisting in drafting this fee request and Mr. Degan spent 1.5 hours assisting in this effort.
 18 Those amounts equal \$702.50;

19 10. Considering all relevant factors, it is my opinion that the attorney fees charged
 20 by my firm while representing the Joyce Schweickert in opposing and quashing defendant Du
 21 Wors's subpoenas (\$5,381.25) and preparing this fee application declaration (\$702.50)—in
 22 the total amount of **\$6,082.75**—are reasonable.

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 25¹ Attached as Exhibit 1 is a copy of Exhibit A to Dkt. #78 for ease of reference.

1 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE
2 STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

3 DATED at Seattle, Washington this 11th day of December, 2014.

4 KEANE LAW OFFICES

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7 T. Jeffrey Keane

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EXHIBIT 1

KEANE LAW OFFICES

100 NE NORTHLAKE WAY, SUITE 200
SEATTLE, WASHINGTON 98105

(206) 438-3737 FACSIMILE (206) 632-2540

Thomas J. Degan Jr.
DIRECT: (206) 438-3739
EMAIL: tjd@tkeanelaw.com

September 9, 2014

Via Email and Facsimile Only

Pamela J. DeVet
Lee Smart, P.S., Inc.
701 Pike St., Suite 1800
Seattle, WA 98101

Re: *Jennifer Schweickert v. John Du Wors, et al. – Subpoenas to Apple and Google*

Dear Ms. DeVet:

Our firm represents Joyce Schweickert. T. Jeffrey Keane has been Joyce Schweickert's attorney for many years and continues to represent her in a variety of legal matters. Mr. Keane is currently out of the country on vacation. I am writing this letter on behalf of Joyce Schweickert and on behalf of Mr. Keane.

In the case of *Jennifer Schweickert v. John Du Wors, et al.*, U.S. District Court, Western District of Washington Cause No. 2:13-cv-00675-RSM, you issued subpoenas to Apple and Google. The Apple subpoena demands the production of electronic correspondence in the email accounts of Jennifer Schweickert sent to or received from (among others) Joyce Schweickert (joyceschweickert@gmail.com) or Mr. Keane (tjk@tkeanelaw.com). The Google subpoena demands the production of such correspondence in the email account of Mark Phillips sent to or received from (among others) Joyce Schweickert (joyceschweickert@gmail.com) or Mr. Keane (tjk@tkeanelaw.com).

As you know, Jennifer Schweickert has filed a motion to quash the two subpoenas. On behalf of Joyce Schweickert and Mr. Keane, I have filed a joinder in Jennifer Schweickert's motion. As Jennifer Schweickert's motion explains, the subpoenas are overly broad. They are also untimely because they seek production of records on September 18, 2014, which I understand is after the discovery cut-off in the case.

Ms. Pamela J. DeVet
September 9, 2014
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But there is an additional reason why the subpoenas are improper and invalid—a reason not mentioned in Jennifer Schweickert's motion to quash. The subpoenas are in clear violation of the Stored Communications Act ("SCA"), 18 U.S.C. §§ 2701-2711.

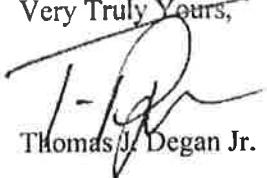
Courts have repeatedly held that the SCA prohibits electronic communication service providers such as Apple and Google from producing emails and other electronic communications in response to civil discovery subpoenas. E.g., *Bower v. Bower*, 808 F.Supp.2d 348, 349-350 (D.Mass. 2011); *In re Facebook, Inc.*, 923 F.Supp.2d 1204, 1205-1206 (N.D.Cal. 2012); *Chasten v. Franklin*, 2010 WL 4065606 at *2 (N.D.Cal. 2010). Although the SCA lists a number of exceptions to this prohibition, there is no exception for responding to a civil subpoena. *Id.* In other words, the SCA flatly prohibits the disclosure sought by your subpoenas.

I plan to file an independent motion to quash the subpoenas, based primarily on the SCA. In that motion, I will seek an award of attorneys' fees for the work necessary to resisting the subpoenas.

I assume you were unaware of the SCA and of the cases holding that subpoenas such as those you have issued violate its provisions. Please immediately withdraw the subpoenas to Apple and Google, and any other similar subpoenas you may have issued to electronic communication service providers. If by 5:00 p.m. today I receive written confirmation that you have withdrawn the subpoenas (including copies of letters or emails to Apple and Google informing them of your decision), I will withdraw my request for an award of attorneys' fees. Otherwise, I will have no choice but to seek full compensation for all fees incurred by my client in resisting the subpoenas.

I look forward to hearing from you later today.

Very Truly Yours,


Thomas J. Degan Jr.

cc: Reed Yurchak, Attorney for Jennifer Schweickert

EXHIBIT 2

Keane Law Offices
 100 NE Northlake Way Suite 200
 Seattle, WA 98105
 Phone: 206-438-3737 Fax: 206-632-2540
 Federal Tax ID#: 41-2073267

Invoice submitted to:
 Joyce Schweickert

10/1/2014

Invoice # 148241

In Reference To: Improper Issuance of Subpoenas

PROFESSIONAL SERVICES

			Hours	Rate
9/8/2014	DMP	Email with CWM regarding receipt of subpoenas for client's Google account; Download pleadings from Jennifer's lawsuit regarding Apple and Google subpoenas; Email to CWM.	0.5	145.00
9/8/2014	CWM	Read Google subpoena issued to JPS; Read Jennifer Schweickert's motion to quash and supporting declaration; Draft JPS motion to quash; Legal research.	3.5	275.00
9/9/2014	CWM	Continue legal research regarding likelihood that subpoenas violate Federal Stored Communications Act; Letter to attorney who issued them demanding they be withdrawn else sanctions will be requested; Continue preparing motion to quash and for sanctions; Prepare proposed order.	3.5	275.00
9/9/2014	TJD	Review and send letter to DuWors' counsel regarding withdrawal of subpoenas; Review, revise and finalize motion to quash.	0.5	245.00
9/9/2014	DMP	Scan and efile JPS joinder to Jennifer's motion to quash Google and Apple subpoena; Scan and efile separate JPS motion to quash subpoena; Email JPS motion to Apple and Google.	1	145.00
9/10/2014	CWM	Draft letter to Google and Apple informing them that it is illegal for them to turn over the requested documents in response to the subpoenas.	0.25	275.00
9/22/2014	TJK	Address subpoena and deposition issues; Meet with staff regarding response.	0.5	335.00
9/23/2014	TJK	Review Hunts Point Venture pleadings, objections, motions regarding subpoenas to Google and Apple	0.75	335.00
9/23/2014	CWM	Email TJK and DMP regarding reply brief in support of JPS motion to quash subpoenas and for sanctions; Conference with TJK; Read DuWors opposition to JPS motion to quash subpoenas and for sanctions; Read related pleadings; Work on reply brief in support of motion to quash.	2	275.00

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Invoice submitted to: 10/1/2014 Invoice # 148241
Joyce Schweickert

In Reference To: Improper Issuance of Subpoenas

PROFESSIONAL SERVICES			\$5,381.25
		Hours	Rate
9/24/2014	CWM	Continue work on reply brief; Continue related legal research.	4.25
9/26/2014	CWM	Continue work on reply brief.	2
9/26/2014	TJK	Review, revise and finalize reply in support of motion to quash subpoena.	0.75
9/26/2014	DMP	Finalize JPS reply in support of Motion to Quash subpoenas; Scan and efile.	0.75